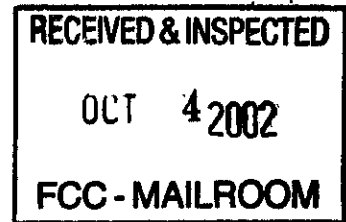


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Kalamazoo Public Schools)	File No. SLD-164612
Kalamazoo, Michigan)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: October 2, 2002

Released: October 3, 2002

By the Wireline Competition Bureau:

1. The Wireline Competition Bureau has under consideration a Request for Review filed by Kalamazoo Public Schools (Kalamazoo), Kalamazoo, Michigan.¹ Kalamazoo requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company to deny one of Kalamazoo's Funding Year 3 requests for discounted services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review. We further direct SLD to pursue commitment adjustment procedures for funds disbursed to Kalamazoo in Funding Year 2.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules provide that an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.⁴ In

¹ Letter from Gary Start, Kalamazoo Public Schools, to the Federal Communications Commission, filed April 9, 2001 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

accordance with the Commission rules, an applicant must file with SLD, for posting to its website, a FCC Form 470 requesting services.⁵ The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.⁶ The Commission's rules provide a limited exemption from the 28-day competitive bid requirement when applicants have "existing contracts."⁷

3. Specifically, under section 54.511(c)(1), contracts entered into on or prior to July 10, 1997 are exempt from competitive bidding requirements for the duration of the contract. Contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational) are also exempt from the competitive bidding requirements, but only for services provided through December 31, 1998.⁸ The Commission established these exemptions because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the SLD website became fully operational.⁹ Applicants with contracts signed during the period between July 10, 1997 and January 30, 1998, therefore, must fully comply with the competitive bidding rules for periods subsequent to December 31, 1998. However, once an applicant posts an FCC Form 470 subjecting a service to competitive bidding and complies with the 28-day waiting period, the applicant may sign a multi-year contract at that time, and need not post any additional FCC Form 470s to support requests for discounts in subsequent years of the contract.¹⁰

⁵ See Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470), OMB 3060-0806 (September 1999) (Form 470 Instructions), at 2-3.

⁶ 47 C.F.R. § 54.504(b), (c); see Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (Form 471 Instructions), at 4; see also SLD website, <<http://www.sl.universalservice.org>>.

⁷ 47 C.F.R. § 54.511(c).

⁸ 47 C.F.R. § 54.511(c)(1). See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1997) (*Fourth Reconsideration Order*). Previously, in an order released on July 10, 1997, the Commission found that only contracts signed after November 8, 1996 and prior to January 30, 1998 were exempt from the competitive bidding requirement for services provided through December 31, 1998. *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095 (1997) (*July 10 Order*). Upon reconsideration, however, the Commission subsequently amended section 54.511(c) in order to avoid penalizing those that were uncertain of their rights prior to the release of the *July 10 Order*. *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

⁹ See *Universal Service Order; July 10 Order*, 12 FCC Rcd at 10098, para. 9.

¹⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 15 FCC Rcd 6732 (1999), para. 10 ("We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law.").

4. On January 10, 2000, Kalamazoo filed the Funding Year 3 FCC Form 471 at issue in this appeal.¹¹ In Funding Request Number (FRN) 320712, Kalamazoo requested discounted telecommunications service, relying on a Funding Year 2 FCC Form 470 in support (Year 2 Form 470).¹² On July 21, 2000, SLD issued a Funding Commitment Decision Letter to Kalamazoo, indicating that a contract for a new service was signed prior to the requisite 28-day waiting period.¹³

5. Kalamazoo then filed an appeal with SLD.¹⁴ It asserted that FRN 320712, seeking "Plain Old Telephone Service" or POTS, was based on a pre-existing multi-year contract.¹⁵ Kalamazoo asserted that it had presented the contract in a Funding Year 1 FCC Form 470, and that its Funding Year 1 funding request based on this contract had been approved by SLD.¹⁶ It further asserted that it posted this service for bidding in Funding Year 2 with the Year 2 Form 470, and had received funding from SLD.¹⁷ It argued that it did not file a Funding Year 3 FCC Form 470 because it was relying on an existing multi-year contract.¹⁸

6. On March 19, 2001, SLD issued an Administrator's Decision on Appeal, upholding the denial of funding.¹⁹ SLD stated that the Item 24 attachments to Kalamazoo's application demonstrated that Kalamazoo signed a new contract for telephone service on January 5, 1999, and noted that the earliest date on which Kalamazoo could sign a contract based on the Year 2 Form 470 was January 7, 1999.²⁰ It therefore concluded that Kalamazoo had not complied with the 28-day waiting period.²¹

7. In response, Kalamazoo filed the instant Request for Review with the Commission.²² In its Request for Review, Kalamazoo asserts that it entered into a binding

¹¹ FCC Form 471, Kalamazoo Public School District, filed January 7, 2000 (Kalamazoo Form 471).

¹² Kalamazoo Form 471 at 5; Form 470, Kalamazoo Public School District, posted December 10, 1998 (Kalamazoo Form 470).

¹³ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Chris Williams, Kalamazoo Public Schools, dated July 21, 2000 (Funding Commitment Decision Letter) at 6.

¹⁴ Letter from Gary L. Start, Kalamazoo Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed July 31, 2000 (Appeal to SLD).

¹⁵ Appeal to SLD at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Gary L. Start, Kalamazoo Public Schools, dated March 19, 2001 (Administrator's Decision on Appeal).

²⁰ *Id.* at 1.

²¹ *Id.*

²² Request for Review.

contract with Ameritech on January 5, 1998, not January 5, 1999, and that this contract supports its funding request.

8. After reviewing the record, we find that SLD correctly denied funding due to a competitive bidding violation, although we differ with SLD as to the nature of the violation. We agree with Kalamazoo that the record demonstrates that the contract on which Kalamazoo relies for the service underlying FRN 320712 was signed on January 5, 1998, not January 5, 1999.²³ As such, it qualified as a pre-existing contract under the Commission's rules, but only for services provided in Funding Year 1.

9. Kalamazoo asserts that it properly rebid this service by posting the Year 2 Form 470.²⁴ However, although Kalamazoo did post the service for bidding in Funding Year 2, it did not, after the 28-day waiting period ended on January 6, 1999, sign a new contract. Instead, it relied in Funding Year 2, as it does now, on the pre-existing contract that it had signed on January 8, 1998.²⁵ As noted above, our competitive bidding rules require that applicants seeking service on new contracts may only rely on contracts signed after the expiration of the 28-day waiting period.²⁶ The fact that Kalamazoo was entitled in Funding Year 1 to rely on its multi-year contract does not alter these requirements because Kalamazoo was fully subject to competitive bidding requirements in Funding Year 2, including the requirement of waiting until after the 28-day bidding period to enter into its service contract. Because the contract underlying FRN 320712 no longer qualifies as a pre-existing contract and was not signed after a 28 day bidding period, we affirm SLD's conclusion that Kalamazoo did not satisfy the competitive bidding requirements and that FRN 320712 must be denied.

10. Kalamazoo notes that it requested and received funding based on this same contract in Funding Years 1 and 2, and therefore should receive it in Funding Year 3.²⁷ However, the Funding Year 1 request was exempt from competitive bidding. Further, we find that, for the reasons discussed above, the Funding Year 2 funding request also violated our competitive bidding requirements and that funding was granted in error.²⁸ We therefore direct SLD to adjust this funding commitment in accordance with its established funding commitment adjustment procedures.

²³ Kalamazoo Form 471, Attachment.

²⁴ Request for Review at 1.

²⁵ Request for Review at 2 ("We have been under the same multi-year contract . . . for year 1, 2 and 3.").

²⁶ 47 C.F.R. § 54.504(b), (c).

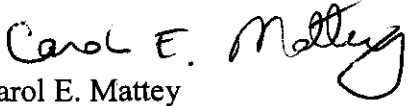
²⁷ Request for Review at 1-2.

²⁸ It is likely that this error was due, in part, to the fact that Kalamazoo erroneously characterized this service on its Funding Year 2 FCC Form 470 as being a tariffed service instead of one pursuant to a pre-existing contract. *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Chris Williams, Kalamazoo Public School District, dated July 8, 1999.

11. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Kalamazoo Public Schools, Kalamazoo, Michigan, on April 9, 2001, IS DENIED.

12. IT IS FURTHER ORDERED that SLD pursue funding commitment adjustment in accordance with the terms of this Order and the established commitment adjustment procedures.

FEDERAL COMMUNICATIONS COMMISSION


Carol E. Matthey
Deputy Chief, Wireline Competition Bureau